IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 13145 of 1997

Between:

M/s. A.T.Minerals, Viswanathapuram,

Chinthakommadinne mandal,Cuddapah district

Represented by its Managing Partner A.Harinath,

S/o.A.Thimmayya, r/o. Door No.1/1982,

Krishnappanagar, Cuddapah. … Petitioner

AND

1)The Superintending Engineer, Assessments

Circle, A.P.S.E.Board, Cuddapah.

2)The Superintending Engineer-operations, Cuddapah.

3) The Chief Engineer, Electricity, A.P.S.E.B., Cuddapah

zone, Cuddapah.

4)The Assistant Divisional Engineer, C.C.C. Sub division,

A.P.S.E.Board, Cuddapah … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue an appropriate writ, order or direction especially in the nature of a Writ of Mandamus declaring the proceedings No.ADE/OCC/CDP/F./Sub-ER/Doc/D.No.1093/96, dated 28.05.1996 on the file of the Assistant Divisional Engineer, Operations and construction, A.P.S.E.Board, Cuddapah as confirmed in Procgs. No. SE/A/CDP/FAO/D.CDP.MP.6/96-97/D.No.1465/96 dated 10.12.1996 of the Superintending Engineer, Assessment, Cuddapah and further confirmed in Appeal No. A.139/97-CDP communicated in Lr. No. CE/CZ/CIP/221/A.139-97.CDP/1835/97, dated 30.04.1997 on the file of the Chief Engineer, Electricity, Cuddapah zone, Cuddapah as being arbitrary, illegal, unconstitutional, null and void and consequently direct the respondents to restore electrical energy to the petitioner unit.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, S.C. for A.P.Transco.

The Court made the following :

O R D E R:

Heard both sides.

The petitioner, who is running an industry in minerals, filed this Writ Petition, inter alia, seeking to assail the impugned proceedings dated 28.05.1996 of the fourth respondent as confirmed by the proceedings dated 10.12.1996 of first respondent and also by the proceedings dated 30.04.1997 of the third respondent.

The case of the petitioner, in brief, is that having regard to certain arrears existing, there has been exchange of demands and requests for paying in instalments, which were accepted by the respondents herein and accordingly, the petitioner has been paying the instalments regularly. However, out of the said arrears due, there was only balance of Rs.44,842/-. Yet, the respondents herein have issued present provisional demand mainly on the ground that even though the petitioner's supply was disconnected due to non-payment of all the arrears and non-compliance of instalments, the petitioner illegally connected the same and made use of energy unauthorisedly. The petitioner's case is that in fact, there is no such disconnection nor any reconnection by himself, and the connection was very much on, all

along since he was paying all instalments regularly and therefore, the theory of pilferage is wholly unsustainable. On filing of explanation by the petitioner, ultimately, final assessment was also passed confirming the amount of Rs.1,18,703-25 ps. Hence, the Writ Petition.

It is contended on behalf of the respondents that, in fact, in view of the non-compliance of the instalments, petitioner's supply was disconnected on 30.09.1995. Still it was found during the inspection on 14.05.1996 that he was misusing the electricity supply and therefore, the proceedings have been initiated for such pilferage.

Considering the submissions made and on perusal of the material, it is seen that there is no dispute to the fact that the petitioner fell in arrears and he was also given relief of payment by way of instalments, which according to the petitioner, was being paid regularly. The main question which falls for consideration is as to whether there was any such disconnection on the part of the respondents herein and reconnection by the petitioner himself and getting supply.

There is no dispute to the fact that the petitioner was paying the instalments and ultimately, it was found that along with the instalment amounts, the petitioner was always paying reconnection charges, which goes to show that there was disconnection by the respondents due to non-payment of the instalments. Therefore, the theory that the supply was not disconnected, can not be accepted.

Admittedly, the date of inspection is as long back as on 14.05.1996 and that the petitioner has been paying the amounts regularly though certain amounts fell due. It is also a fact that the petitioner has already paid 50% of the amount demanded in the present proceedings and is due a further sum of Rs.44,842/- out of the arrears existing at the relevant point of time. In view of the above

circumstances and also that the assessment as made is on higher side, it can as well be reduced, by directing the petitioner to pay further 25% of the demand amount, in addition to the amount already paid by him.

The Writ Petition is, accordingly, partly allowed with a direction to the petitioner to pay further amount of 25% of the demand amount. No costs.

It is needless to mention that the respondents are entitled to collect further amounts, if any, towards surcharge or otherwise, as per rules.

(B.Prakash Rao, J.)

16.12.2004

DRK

Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on

Thursday, the sixteenth day of December Two thousand and four.

… Registrar

Copy to:

1)The Superintending Engineer, Assessments

Circle, A.P.S.E. Board, Cuddapah.

2)The Superintending Engineer-operations, Cuddapah.

3) The Chief Engineer, Electricity, A.P.S.E.B., Cuddapah

zone, Cuddapah.

4)The Assistant Divisional Engineer, C.C.C. Sub division,

A.P.S.E.Board, Cuddapah

5)Two CD copies.